

NOTICE OF PROPOSED REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections**

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposed to adopt section 3426 in the California Code of Regulations (CRC), Title 15, Division 3 relating to the establishment of the Employee Early Intervention Program.

PUBLIC HEARING:

Date and Time: August 6, 2001, 9:00 a.m. to 12:00 p.m.
Place: Department of Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close August 6, 2001 at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)322-3842; or by e-mail at pmchenry@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Peggy McHenry, Chief,
Regulation Management Unit
Telephone (916) 322-9702**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Patrick Cancilla
Office of Health and Safety
Telephone (916) 322-1428.**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may affect small businesses.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared and will make available the text and the Initial Statement of Reasons of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action adopts provisions governing the establishment of an Early Intervention Program (EIP), within the California Department of Corrections (Department). These provisions were established pursuant to the decision by Judge James T. Ford, Sacramento Superior Court in Stephen Wayne Tessler vs. Department of Corrections, Case Number 98CS01927, September 29, 2000, in accordance with Labor Code (LC) 3214, and his directive to be filed with the Office of Administrative Law by May 29, 2001.

The EIP seeks to provide appropriate and timely information regarding the assessment and processing of work-related injury/illness claims. Additionally, the EIP seeks to improve and streamline workers' compensation claims filed for all departmental employees and reduce costs associated with the delivery of workers' compensation.

The program is a voluntary employee benefit, which includes an Early Intervention Counselor (EIC) visit regarding workers' compensation options and other entitlement benefits. The EIC services will aid an

employee who has sustained a qualified injury/illness in making informed benefit choices regarding workers' compensation benefits, other employee entitlements to benefits, medical treatment options, and provide several return to work options. The EIC visit is the employee's initial introduction into the workers' compensation process and is not meant as an ongoing information service. The employee will be instructed in all aspects of the Department's EIP. If, after the initial consultation, the employee requires additional information, the Return-to-Work Coordinator (RTWC), the information offices of the Department of Industrial Relations or the Adjusting Agency may provide information and answer any questions regarding new and updated workers' compensation benefits.

Also included are the services of an Agreed Medical Panel Doctor (AMPD). The AMPD will provide medical, psychological, and psychiatric treatment under LC section 4600 to departmental injured/ill employees to all injured/ill departmental employees when an employee has not pre-designated their own private physician through their own medical insurance. The AMPD may be requested to provide written opinions or evaluations to assist in decisions regarding compensability pursuant to California Code of Regulations (CCR), Title 8, Section 9785. When an injury/illness is in dispute, the employee must first contact the RTWC. At that time, the RTWC will request the services of an AMPD, who will then provide an evaluation of the employee's claim and provide a written opinion to the Adjusting Agency as to whether the claim is a qualified injury/illness.

This regulation provides for the Department's early involvement in the process, which will result in a reduction of the number of lost work days; increase the number of employees returning to work from work-related injuries; reduce the number and cost of medical-legal consultations; reduce the total cost of finalizing claims; and reduce the rate of industrial disability retirement and its costs.

Pursuant to LC 3214, the Director or designee, in conjunction with one member from Employee Representative Associations representing individual bargaining units, shall perform the task of selecting the Early Intervention Selection Committee (EISC).

This regulation requires individuals, who wish to provide services under the EIP, to submit resumes of qualifications to the local RTWC. The EISC shall then review the resumes of qualifications and authorize individuals to provide EIC services within the scope of the EIP. The EISC shall also order corrective action or revoke the authorization of an EIC to provide services when a written statement of the charges are given. The EISC's decisions shall be based on a simple majority of the members in attendance. A simple majority constitutes 51% of the members in attendance.

Employees shall be referred by the RTWC to those EICs approved by the EISC. When the RTWC is making the referral, careful consideration will be given in regards to the EIC's close proximity to ensure easy access for the employee, and to reduce mileage reimbursement costs if it is necessary for the EIC to meet the employee at work or at their home.

The Adjusting Agency is a firm under a State of California Interagency Agreement with the State Department of Personnel Administration that administers workers' compensation claims acting on behalf of the Department. In addition to satisfying the objectives stated in LC 3214(b)(1) through LC 3214(b)(15), the Adjusting Agency goal is to maintain communication with the RTWC, and provide information and feedback to the Department regarding the status of employee claims. This will aid in increased communication throughout the workers' compensation process among all participants. This is in keeping with the objectives of LC 3214(b), to settle disputes rather than to litigate them.

This provision will also allow the Adjusting Agency to gather all available information, medical evaluations, etc. from a qualified medical evaluator regarding individual injury/illness claims in order to make a final decision on the approval or denial of a workers' compensation claim.